

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

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COURT OF APPEALS
DIVISION TWO

IN RE NASHON B.

) 2 CA-JV 2006-0035

) DEPARTMENT B

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. 13271702

Honorable Patricia G. Escher, Judge

AFFIRMED

Barbara LaWall, Pima County Attorney
By Peter W. Hochuli

Tucson
Attorneys for State

Robert J. Hooker, Pima County Public Defender
By Susan C. L. Kelly

Tucson
Attorneys for Minor

E S P I N O S A, Judge.

¶1 Nashon B., born July 22, 1990, appeals from the juvenile court's disposition order committing him to a level IV secure care facility of the Arizona Department of Juvenile Corrections (ADJC) for a thirty-day minimum length of stay not to exceed his eighteenth

birthday, arguing the court failed to exhaust less restrictive alternatives prior to committing him to ADJC. We affirm.

¶2 Nashon was originally placed on probation in Maricopa County for a felony offense in 2003. At least three delinquency petitions and thirteen referrals were subsequently filed upon the transfer of his probation to Pima County, including disciplinary referrals for violations while he was in juvenile detention and incidents of running away, as well as petitions to revoke probation. According to the predisposition report, despite services offered in Maricopa and Pima Counties, and through the Tohono O’odham Nation while Nashon was living in Sells, Nashon remained noncompliant and continued his drug use and disruptive, delinquent behavior; was unsuccessfully discharged from The New Foundation residential program; and ultimately, was terminated from probation in March 2005. Neither of Nashon’s parents was willing to care for him, and his elderly grandmother feared for the safety of the other children in her home in his presence. In June 2006, Nashon admitted responsibility for disorderly conduct, the class-one-misdemeanor offense leading to this appeal.

¶3 The juvenile court has ““broad power to make a proper disposition”” of a delinquent juvenile. *In re Maricopa County Juvenile Action No. JV-510312*, 183 Ariz. 116, 118, 901 P.2d 464, 466 (App. 1995), *quoting In re Maricopa County Juvenile Action No. J-72918-S*, 111 Ariz. 135, 137, 524 P.2d 1310, 1312 (1974). We will not disturb a juvenile court’s disposition order unless the court has clearly abused its discretion. *In re*

John G., 191 Ariz. 205, ¶ 8, 953 P.2d 1258, 1260 (App. 1998). Although the juvenile court is not required to follow the guidelines for commitment to ADJC under § 6-304(C)(1), Ariz. Code of Jud. Admin., it must consider them in making a disposition. *In re Melissa K.*, 197 Ariz. 491, ¶ 14, 4 P.3d 1034, 1038 (App. 2000). The current guidelines provide:

1. When considering the commitment of a juvenile to the care and custody of ADJC, the juvenile court shall:

- a. Only commit those juveniles who are adjudicated for a delinquent act and whom the court believes require placement in a secure care facility for the protection of the community;

- b. Consider commitment to ADJC as a final opportunity for rehabilitation of the juvenile, as well as a way of holding the juvenile accountable for a serious delinquent act or acts;

- c. Give special consideration to the nature of the offense, the level of risk the juvenile poses to the community, and whether appropriate less restrictive alternatives to commitment exist within the community; and

- d. Clearly identify, in the commitment order, the offense or offenses for which the juvenile is being committed and any other relevant factors that the court determines as reasons to consider the juvenile a risk to the community.

Ariz. Code of Jud. Admin. § 6-304(C)(1).

¶4 Relying on *In re Niky R.*, 203 Ariz. 387, 55 P.3d 81 (App. 2002), Nashon argues the juvenile court failed to exhaust “less-restrictive alternatives prior to [entering] an order of commitment to ADJC.” Nashon claims the court should have considered placing him on juvenile intensive probation (JIPS) or in a high impact residential program, like Canyon State Academy, rather than committing him to ADJC. Nashon is correct that the

court did not exhaust every less-restrictive alternative; however, it was not required to do so. Neither the guidelines, statute, nor prior decisions require specific findings showing the court has explored all possible alternatives before committing a juvenile to ADJC, only that it “identify the less restrictive alternative and give ‘special consideration’ to the nature of the offense at issue and the specific risk the juvenile poses.” *Id.* ¶ 19, *quoting In re Maricopa County Juvenile Action No. J-90110*, 127 Ariz. 389, 392, 621 P.2d 298, 301 (App. 1980).

¶5 The court expressly noted at the disposition hearing it had considered the supreme court’s current commitment guidelines, as *Melissa K.* requires, and concluded, because Nashon had “engaged in a pattern of conduct characterized by persistent and delinquent offenses that can’t be controlled in a less secure setting as demonstrated by the previous use of other alternatives,” commitment to ADJC was the appropriate disposition. The current guidelines reflect the mandate of A.R.S. § 41-2816(A),¹ which the court expressly relied upon. The court considered that Nashon had previously been adjudicated delinquent on a felony in Maricopa County, had committed offenses in Pima County, had

¹Section 41-2816(A) provides:

The department shall operate and maintain or contract for secure care facilities for the custody, treatment, rehabilitation and education of youth who pose a threat to public safety, who have engaged in a pattern of conduct characterized by persistent and delinquent offenses that, as demonstrated through the use of other alternatives, cannot be controlled in a less secure setting or who have had their conditional liberty revoked pursuant to § 41-2819.

not complied with probation conditions, had failed in a residential treatment facility, had repeatedly run away, and had absconded to Mexico where he had been charged with additional criminal acts.

¶6 Nashon’s probation officer noted in the predisposition report, which the court reviewed, that Nashon had displayed “noncompliance and disrespect for authority” not only in the community but also while he was in detention in “lockdown status.” The probation officer also reported that placing Nashon at another residential facility would be “setting him up for failure”; his behavior would “prevent him from successfully completing any form of residential program”; he posed a threat not only to the community, but to himself; and the psychologist who had evaluated Nashon, the placement team, and Nashon’s father had all recommended Nashon be committed to ADJC. The Child Protective Services Investigator agreed Nashon’s “needs would be met best in a correctional facility.” Nashon’s attorney acknowledged Nashon’s behavior in detention had not been “exemplary,” but added he had improved in the weeks before the disposition hearing. Noting that Nashon is not the sort of person it would ordinarily commit to ADJC, the court nonetheless found that placing him in ADJC was the only way to afford him the treatment he needed.

¶7 It is clear the court was aware that other alternatives had been tried without success and that JIPS was not available in Ajo, where Nashon was living. The court noted, even if it deemed Nashon a dependent child, an option the court had considered, the court “did not believe that [Nashon] would stay in . . . custody long enough to receive treatment.”

Based on this record, there is no doubt the court viewed ADJC as Nashon’s final and only opportunity for rehabilitation; it had given “‘special consideration’ to the nature of the offense at issue and the specific risk the juvenile pose[d],” *Niky R.*, 203 Ariz. 387, ¶ 19, 55 P.3d at 85, *quoting Maricopa County No. 90110*, 127 Ariz. at 392, 621 P.2d at 301; it had considered his family circumstances, specifically, the difficulty posed by his father’s and grandmother’s unwillingness to care for him; and it ultimately had concluded that no other appropriate less restrictive alternative to commitment existed.

¶8 Because the record shows Nashon met the guidelines for commitment to ADJC and supports the conclusion that the juvenile court considered whether an appropriate, less restrictive alternative existed, we conclude the court did not abuse its discretion. Therefore, the disposition order is affirmed.

PHILIP G. ESPINOSA, Judge

CONCURRING:

PETER J. ECKERSTROM, Presiding Judge

J. WILLIAM BRAMMER, JR., Judge